

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA

v.

HENRRY JOSUE VILLATORO SANTOS

Defendant.

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CASE NO. 1:25-MJ-204

MOTION TO DELAY ENTRY OF DISMISSAL ORDER

The Defendant, Henry Josue Villatoro Santos, by counsel, moves the Court to delay entering a final order of dismissal in this case for a period of fourteen (14) days, and states the following in support of this motion:

On March 27, 2025, members of the FBI's Special Weapons and Tactics Team executed a federal search warrant at 24-year-old Henry Josue Villatoro Santos's family home. Dkt. #3, ¶ 8. Mr. Villatoro Santos was arrested at the scene, and the Government obtained a Criminal Complaint charging Mr. Villatoro Santos with one charge of possession of a firearm by an undocumented immigrant, in violation of 18 U.S.C. § 922(g)(5)(A). Dkt. # 1-5. Mr. Villatoro Santos had his initial appearance before this Court the same day, and a Temporary Detention Order was entered. Dkt # 6. On April 1, 2025, a preliminary hearing was held, and the Court found probable cause on the firearm charge. Dkt # 10.

On April 8, 2025, the Office of the Federal Public Defender moved to withdraw from the case due to a conflict of interest, which motion was granted. Dkt. #12-13. On April 9, 2025 at 10:12 am, the undersigned was appointed to represent Mr. Villatoro Santos. Less than two hours later, the Government filed a Motion to Dismiss the case. Dkt. # 14. Counsel's understanding is

that the Government now intends to pursue the deportation of Mr. Villatoro Santos in lieu of this prosecution.

The above is a fairly straightforward procedural history. But in the background of this routine legal process, the United States Government, at its highest levels, has been publicly and loudly propagating allegations that Mr. Villatoro Santos is “one of the top leaders of MS-13” and “one of the leaders for the East Coast, one of the top three in the entire country,” claims made by Attorney General Pamela Bondi in a high-profile press conference on March 27, 2025.¹ Flanked by FBI Director Kash Patel, Virginia Governor Glenn Youngkin, U.S. Attorney for the Eastern District of Virginia Erik Siebert, and other government officials, the Attorney General went on to say that Mr. Villatoro Santos is “an illegal alien from El Salvador,” and that “he will not be living in our country much longer.” *Id.* Throughout this over twenty-three-minute press conference, multiple federal and state government officials trumpeted the significance of this arrest and pressed the claim that the Government had detained a dangerous, top-level leader of the MS-13 gang.

The Government did not stop there. FBI Director Kash Patel wrote on X: “I can now confirm that earlier this morning, law enforcement personnel arrested a top MS-13 leader in Virginia. Outstanding work from @AGPamBondi, our brave agents, @CBP, @GovernorVA, and our state and local partners. This is a massive victory for a safer America. Justice is coming.”² That social media post received over 1.3 million views. *Id.* Shortly after, President Trump tweeted: “Just captured a major leader of MS13. Tom HOMAN is a superstar!”³ Moreover, both Attorney

¹ See <https://cnycentral.com/news/nation-world/authorities-to-hold-news-conference-after-capture-of-top-ms-13-leader-in-woodbridge-virginia-24-year-old-from-el-salvador>

² See <https://x.com/FBIDirectorKash/status/1905231060553630019>

³ See <https://x.com/TrumpUpdateHQ/status/1905241514759893423>

General Bondi and FBI Director Patel were reportedly physically present when Mr. Villatoro Santos was arrested.

Despite these breathless pronouncements and the massive publicity that resulted, with every search engine tying Henry Villatoro Santos to the Government's claim that he is a "top leader" of MS-13, less than two weeks after Mr. Villatoro Santos's arrest, the Government filed a Motion to Dismiss the case without prejudice, writing that "the government no longer wishes to pursue the instant prosecution at this time." Dkt. # 14.

The Government now intends to pursue removal proceedings against Mr. Villatoro Santos pursuant to an ICE detainer. If and when this Court enters an Order dismissing this case, Mr. Villatoro Santos will be immediately transferred to ICE custody. The danger of Mr. Villatoro Santos being unlawfully deported by ICE without due process and removed to El Salvador, where he would almost certainly be immediately detained at one of the worst prisons in the world without any right to contest his removal, is substantial, both in light of the Government's recent actions and the very public pronouncements in this particular case.

As the Court is aware, President Trump recently ordered the deportation of certain immigrants to El Salvador without any due process, without any notice, without any hearing, and without any right to contest whether they are in fact removable, citing the Alien Enemies Act of 1798. *J.G.G. v. Trump*, (1:25-cv-0076) (D. D.C. 2025). Despite being ordered by U.S. District Judge James Boasberg not to remove the petitioners pending resolution of the case, and to immediately turn back any deportation flights carrying any of the petitioners, the Government nonetheless removed those petitioners to El Salvador and later argued that the court had no

jurisdiction once the petitioners were no longer on U.S. soil. The President went a step further with public insults and attacks targeting Judge Boasberg and calling for his impeachment.⁴

The immigrants deported despite Judge Boasberg's order, who were given no opportunity to challenge the Government's bald assertion that they were members of the Venezuelan gang Tren de Aragua, were handed over to Salvadoran authorities, who frog marched them into one of the most notorious mega-prisons in the world, Centro de Confinamiento de Terrorismo (CECOT), a prison with a well-documented history of torture, ill-treatment, appalling conditions, and extreme overcrowding.⁵ The Salvadoran authorities turned this spectacle into a terrifying display of cruelty that was documented in a movie-like production for the world to see, a production that Salvadoran President Nayib Bukele triumphantly shared on social media along with a sarcastic comment directed at Judge Boasberg's Order: "Oopsie. . . Too late," along with a laughing emoji.⁶

The examples of the Government depriving immigrants of basic due process have, unfortunately, become plentiful. In its rush to prove to the American public that this administration is tough on crime and immigration enforcement, the Government wrongfully deported Kilmar Abrego Garcia, a Maryland man, to El Salvador, despite a court order finding that he is likely to face persecution if removed to El Salvador. The Government then admitted publicly that it had wrongfully removed Mr. Abrego Garcia due to an "administrative error," but nonetheless maintained that it had no obligation to return him to the United States. *Abrego Garcia v. Noem*,

⁴ See <https://truthsocial.com/@realDonaldTrump/posts/114232682702493359>

⁵ See <https://www.hrw.org/news/2025/03/20/human-rights-watch-declaration-prison-conditions-el-salvador-jgg-v-trump-case>

⁶ See https://www.nytimes.com/2025/03/17/world/americas/el-salvador-nayib-bukele-deportees.html?smid=fb-nytimes&smtyp=cur&fbclid=IwY2xjawJjxTdleHRuA2FlbQlXMQABHnHf-qsZP2KVRcMIG4bUYq1fsy-OLPFRfbeuEkmWgAk82tGl6zFMII5gYz8R_aem_pFYk8IfdpZCR1BqqdnJY2A

No. 25-1345, 2025 WL 1021113 (4th Cir. Apr. 7, 2025). Similarly, last month the Government deported a kidney transplant specialist and professor at Brown University, even though she had a valid visa and a court order temporarily blocking her removal.⁷ These examples are now becoming an everyday occurrence.

Based on this recent pattern of abuse of process and defiance of court orders by immigration enforcement officials, there is a substantial risk that if this Court enters a dismissal order at this time that Mr. Villatoro Santos may be immediately deported without due process and before he has an opportunity to retain immigration counsel and assert any defenses he may have to removal. In that event, it is almost certain that Salvadoran authorities would immediately detain him upon arriving in El Salvador and detain him indefinitely at CECOT without any trial or due process based on the United States Government's public pronouncements that he is a "top leader" of MS-13. The risk of this turning effectively into a life sentence without any due process is very real.

The undersigned is keenly aware of the unusual nature of this motion. But these are unusual times. To be sure, the Government may, with leave of court, dismiss an indictment, information, or complaint. Fed. R. Crim. P. 48(a). But the Court has discretion to determine whether to grant leave of Court and the timing of the entry of any dismissal order. *See United States v. Goodson*, 204 F.3d 508, 512 (4th Cir. 2000).

Based on the timing of the undersigned's appointment to represent Mr. Villatoro Santos and the timing of the Government's Motion to Dismiss, the substantial risks involved in his anticipated transfer to the custody of ICE officials, and the very high-profile nature of his arrest

⁷ See <https://www.nytimes.com/2025/03/16/us/brown-university-rasha-alawieh-professor-deported.html>

and the allegations against him, there is good cause to delay the entry of any order of dismissal in order to allow Mr. Villatoro Santos an opportunity to seek the assistance of immigration counsel and to seek any further appropriate relief.

For these reasons, Henry Villatoro Santos, by counsel, respectfully moves the Court to withhold entry of any final order in this case for a period of at least fourteen (14) days, and for such further relief as the Court deems appropriate.

Respectfully Submitted,
Henry Villatoro Santos
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was filed electronically using the CM/ECF system, which will send a notification of such filing (NEF) to all counsel of record.

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